

11 USC § 502 (b) (7)
collateral estoppel

Concrete Sawing Co. v. Oregon Laborers-Employers Trust Funds
BAP No. OR-91-1577 VOAs
(In re Concrete Sawing Co) BK no. 389-31745-S11

BAP aff'g DDS 5/13/92 unpublished

The debtor sought to limit the Trust Fund's claim for damages under a collective bargaining agreement to the one year limitation imposed by §502(b)(7). There were no damages subject to the one year limitation because the Trust Fund's claim did not include prospective damages. The debtor was collaterally estopped from re-litigating the issue of the date of the termination of the contract which had been determined by the state court before the chapter 11 case was filed.

NOT FOR PUBLICATION

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT
U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

TERENCE H. DUNN, CLERK

BY W DEPUTY

In re
CONCRETE SAWING CO., an Oregon
corporation,
Debtor.

CONCRETE SAWING CO.,
Appellant,
v.
OREGON LABORERS-EMPLOYERS TRUST
FUNDS,
Appellee.

BAP No. OR-91-1577 VOAs
BK No. 389-31745-S11

A M E N D E D
M E M O R A N D U M

Argued and Submitted
on November 21, 1991, at Portland, Oregon

Filed: JAN 23 1992

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Donal D. Sullivan, Bankruptcy Judge, Presiding

Before: Judges VOLINN, OLLASON, and ASHLAND, Bankruptcy Judges

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1 OVERVIEW

2 Debtor/Appellant appeals from the bankruptcy court's order
3 overruling Debtor's objection to a claim filed by Oregon Laborers-
4 Employers Trust Fund (Trust Fund), trustees for the union trust
5 fund, for unpaid contributions.

6 Debtor and Trust Fund entered into a collective bargaining
7 agreement which required Debtor to make contributions to the union
8 trust fund. Debtor failed to make contributions and Trust Fund
9 brought a breach of contract suit in state court. Prior to
10 Debtor's filing a Chapter 11 bankruptcy petition¹, Trust Fund was
11 awarded judgment for damages.

12 After Debtor filed its petition under Chapter 11, Trust Fund
13 filed the judgment as proof of claim. Debtor objected to this
14 claim contending that it was subject to the one year limitation
15 for damages arising from employment contract claims under §
16 502(b)(7)². The bankruptcy court overruled Debtor's objection on
17

18 ¹ Unless otherwise indicated, all section references are to
19 the Bankruptcy Code, Title 11 U.S.C. Sections 101-1330.

20 ² Section 502(b)(7), which governs the allowance of claims
21 for termination of an employment contract, provides that the court
22 shall determine and allow claims made by creditors except to the
23 extent that:

24 (7) if such claim is the claim of an employee for damages
25 resulting from the termination of an employment contract,
26 such claim exceeds--

(A) the compensation provided by such contract, without
acceleration, for one year following the earlier of -

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee
to terminate, or such employee terminated, performance
under such contract; plus

1 basis that, assuming the applicability of § 502(b)(7) to a
2 collective bargaining agreement, there were no damages subject to
3 the one year limitation since Trust Fund's claim includes no
4 prospective damages. The court also held that Debtor was
5 collaterally estopped from re-litigating the issue involving the
6 date of termination which had been fixed by the state court.

7 Debtor appeals the trial court's holding. We AFFIRM.
8

9 **FACTUAL AND PROCEDURAL HISTORY**

10 On May 25, 1977, Larry Goodwin, Debtor's predecessor, entered
11 into a prehire agreement with Appellee Trust Fund. This agreement
12 continued in effect after Debtor/Appellant incorporated in June
13 1980. The prehire agreement incorporated by reference the Master
14 Labor and Trust Agreement (Agreement) which was then in effect
15 between Trust Fund and Oregon-Columbia Chapter of Associated
16 General Contractors of America. When the union later attained
17 majority status in Debtor's business, the prehire agreement
18 converted into a collective bargaining agreement which under the
19 National Labor Relations Act Debtor could not repudiate without
20 giving notice at least 60 days before the expiration date.³
21

22 (B) any unpaid compensation due under such contract, without
23 acceleration, on the earlier of such dates;

24 ³ By using a prehire agreement, an employer and a union may
25 enter into an agreement before the employees to be covered by the
26 contract have been hired or become union members. Once the union
attains majority status, the prehire agreement converts into a
collective bargaining agreement, to which all statutory rights
under the National Labor Relations Act 29 U.S.C. 158(d) attach.

1 The Agreement required Debtor to make contributions to the
2 applicable health, welfare, pension, and vacation trust funds.
3 These trust funds pay benefits to any employees doing laborers'
4 work, regardless of union membership. Under the terms of the
5 Agreement, either party could terminate the agreement by giving
6 the other party written notice of intention to terminate at least
7 90 days in advance of the expiration date. The Agreement was
8 renewed by the parties every few years. The last of several
9 successive Agreements between Debtor and Trust Fund was due to
10 expire on May 31, 1986.

11 Debtor made contributions to the trust funds on behalf of
12 its union employees during the period that they were employed but
13 did not make contributions on behalf of the non-union employees.
14 Debtor informed Trust Fund by letter of its intent to terminate
15 the entire collective bargaining agreement on February 27, 1984,
16 and ceased making contributions.

17 Trust Fund then brought suit in state court against Debtor
18 for unpaid contributions. On December 29, 1988, Trust Fund
19 obtained judgment against Debtor, inter alia, for unpaid
20 contributions from January 1977 through 1988 on behalf of both
21 union and nonunion employees. Debtor appealed this judgment. On
22 January 9, 1991, the Oregon Court of Appeals ruled that the
23 expiration date of the contract, May 31, 1986, was the contractual
24 measure of the obligation to pay contributions. The court
25 reversed the lower court's judgment for unpaid contributions after
26

1 May 31, 1986. Abbott v Goodwin, 105 Or. App. 132, 804 P.2d 485
2 (1991).

3 On April 21, 1989, Debtor filed its petition under Chapter
4 11. Trust Fund timely filed a claim for its judgment against
5 Debtor.

6 In conjunction with the hearing on the confirmation of
7 Debtor's third plan of reorganization, Debtor objected to Trust
8 Fund's claim. The basis of Debtor's objection was that Trust
9 Fund's claim for unpaid distributions was subject to the one year
10 limitation applicable to the termination of employment contracts
11 pursuant to § 502(b)(7). After a separate hearing on the issue
12 involving the Trust Fund's claim, the bankruptcy court delivered
13 oral findings of fact and conclusions of law and on May 8, 1991,
14 entered an order overruling Debtor's objection.

15 The bankruptcy court concluded that there would be no damages
16 subject to the one year limitation, assuming § 502(b)(7) applied
17 to the facts of this case, because the one year limitation for
18 damages under § 502(b)(7) only applies to prospective damages
19 arising after the termination date of the contract. Since Trust
20 Fund's claim includes only retrospective damages arising before
21 the termination date, the § 502(b)(7) limitation does not apply.

22 The court also concluded that it was collaterally estopped by
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1 the state court decision from rehearing the issue involving the
2 determination of the Agreement's termination date.⁴

4 ISSUE PRESENTED

5 Does the determination of the termination date of a contract
6 under nonbankruptcy law by the state court collaterally estop the
7 bankruptcy court from re-determining the termination date of a
8 contract within the meaning of § 502(b)(7)?⁵

10 STANDARD OF REVIEW

11 The applicable standard of review where issues on appeal
12 involve solely questions of law is de novo. In re Johnson, 62
13 B.R. 24, 28 (9th Cir. BAP 1986).

15 DISCUSSION

16 Debtor contends that the determination of the termination
17 date of the employment contract within the meaning of § 502(b)(7)
18 is different under bankruptcy law than it is under non-bankruptcy
19 law, arguing that the termination date should be related to the
20

21 ⁴ The court also stated that, even if collateral estoppel did
22 not apply, it would independently reach the same result as the
23 state court by applying principles provided in the National Labor
Relations Act 29 U.S.C. Sections 1 - 2200.

24 ⁵ Both parties to this appeal request this Panel to determine
25 an issue not decided by the court below: whether § 502(b)(7)
26 applies to collective bargaining agreements? There is no reason
to provide an advisory ruling on this issue; we decline the
request.

1 date of breach of contract by Debtor. Based upon this theory,
2 Debtor proposes three alternative methods for calculating the date
3 in which the one year limitation in § 502(b)(7) commences: 1) the
4 effective date of the contract, 2) the termination date of each
5 individual employee, and 3) the date on which Debtor notified
6 Trust Fund of its intent to breach the contract.

7 Trust Fund contends that collateral estoppel applies to the
8 prior determination by the Oregon Court of Appeals that the
9 Agreement terminated on June 1, 1986 or, in any event, that the
10 reasoning of that court should be applied.

11 The doctrine of collateral estoppel bars re-litigation of
12 issues of fact or law when the issue is actually litigated,
13 determined by a final judgment, and essential to the judgment in
14 prior litigation between the same parties. South Delta Water
15 Agency v. U.S. Dept. of Interior, 767 F.2d 531, 538 (9th Cir.
16 1985). When issues of law arise in successive actions involving
17 unrelated subject matter, preclusion may be inappropriate.
18 Montana v. United States, 440 U.S. 147, 162 (1979). The
19 principles of collateral estoppel apply in bankruptcy proceedings
20 under the current Bankruptcy Code. See Grogan v. Garner, 111
21 S.Ct. 654, 658, n.11 (1991).

22 In the present case, it is not disputed that the
23 determination of the termination date of the Agreement by the
24 Oregon Court of Appeals under the principles of labor law was
25 actually adjudicated and essential to the judgment. Debtor
26 attempts to use the same evidence presented in state court to

1 obtain a different result in bankruptcy court. The subject matter
2 is close enough to make preclusion appropriate. The bankruptcy
3 court was correct in finding that it was collaterally estopped
4 from re-hearing the issue of the termination date of the
5 Agreement.

6 Even if we did not apply collateral estoppel to the issue of
7 determining the termination date, § 502(b)(7), by its terms,
8 limits claims under employment contracts to one year from the date
9 of termination of the contract. The statute contemplates a
10 limitation on claims resulting from prospective loss following
11 termination of the contract.

12 The concept of termination referred to in the statute deals
13 with the date of the ending of the contractual relationship and
14 prospective damages flowing therefrom. This differs from damages
15 flowing from the breach of an existing contract under which
16 parties maintain an ongoing relationship.

17 Here, the contractual obligations of Debtor with its
18 employees under the collective bargaining agreement ended on the
19 expiration date of the agreement on May 31, 1986. The damages
20 sought by Trust Fund were not for compensation which would have
21 been paid but for the discontinuation or termination of that
22 particular contractual relationship. By renewing the agreement,
23 Debtor chose to continue the contractual relationship, thereby
24 accruing, as the state court found, a debt of unpaid contribution,
25 all of which was due and owing prior to and up to the date of
26 termination.

1 The collective bargaining agreement terminated on May 31,
2 1986. Trust Fund has a claim for unpaid contributions up to this
3 date. Since Trust Fund has no prospective claims arising after
4 termination of the contract, the bankruptcy court was correct in
5 finding that § 502(b)(7) would have no effect in limiting Trust
6 Fund's claim.

7
8 **CONCLUSION**

9 Debtor was collaterally estopped from re-litigating the issue
10 determined by the state court which held that the Agreement
11 terminated on the expiration date, May 31, 1986. Further, on the
12 facts presented, § 502(b)(7) does not provide a basis for
13 limitation of appellee's claim which is for damages up to the date
14 of termination and for none thereafter.

15 Accordingly, the bankruptcy court's holding overruling
16 Debtor's objection to Trust Fund's claim for unpaid contributions
17 is AFFIRMED.